

A.G. Contract No.: KR05-0783TRN
ECS File No.: JPA 05-063
Project No.: TEA-SAF-0- (1)/
TEA-SAF-0- (2)
Section: Glen Meadow /
Discovery Park Blvd
Project: Multi-use Pathway
TRACS No.: SL481 01D01C
SL478 01D/01C
Budget Source Item No.: Local

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF SAFFORD

THIS AGREEMENT is entered into this date September 26, 2005, pursuant to Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF SAFFORD, acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated the undersigned the authority to execute this Agreement on behalf of the State.
2. The City is empowered by City of Safford Municipal Code, Section 2.08.010 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. Congress has authorized appropriations for, but not limited to, the twelve eligible transportations enhancement activities.
4. The project lies within the boundary of the City and has been selected by the City; the survey of the project has been completed; and the plans, estimates and specifications will be prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for its approval.
5. The interest of the State for this Project is in the acquisition of Federal funds for the use and benefit of the City and is authorized as the designated agent. Funds expended for the Project, are authorized by reason of Federal law and regulations.
6. The City, in order to obtain Federal funds for the construction of the Project, is willing to provide City funds to match Federal funds in the ratio required or as finally fixed and determined by the City, State and FHWA, including actual construction engineering (CE) and administration costs.

NO. 27742
Filed with the Secretary of State
Date Filed: 9-26-05
Janice K. Brewer
Secretary of State
By: [Signature]

7. The work embraced in this Agreement is for the design, construction and maintenance of Phase II and Phase III Multi-use Pathways, hereinafter referred to as the "Project". Phase II will consist of a 1.7 mile, 10 foot wide multi-use pathway along Discovery Park Boulevard, extending to US Highway 191 between Milepost (MP) 119 – 120, as shown on Exhibit "A", attached hereto and made a part hereof. Phase III will consist of a 1.9 mile multi-use pathway located from the Glenn Meadows Park running west to 20th Avenue, north to the Golf Course Road and continuing west to the Bureau of Land Management Property, as shown on Exhibit "A", attached hereto and made a part hereof. Included in the project will be benches, pedestrian and bicycle signs. The City will be responsible for the design and construction of the Project and the City will maintain the Project upon completion. The estimated Project costs are as follows:

TRACS NO.: SL478 01C / 01D - Phase II

Estimated Federal Aid @ 94.3%	\$273,941.50
Estimated City Funds @ 5.7%	\$ 16,558.50
<i>Estimated Construction & Design Costs</i>	<i>\$290,500.00</i>

TRACS No.: SL481 01C / 01D – Phase III

Estimated Federal Aid @ 94.3%	\$405,301.40
Estimated City Funds @ 5.7%	\$ 24,498.60
<i>Estimated Construction & Design Costs</i>	<i>\$429,800.00</i>

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The City shall:

a. Prepare design plans, specifications and such other documents and services required for construction bidding and construction. Incorporate or resolve State's review comments.

b. With the consent of the FHWA, use City of Safford Purchasing Procedures not inconsistent with State of Arizona Procurement Procedures; advertise for bids, receive and open bids, enter into contract(s) with a firm(s) to whom the award is made for the construction of the Project. The Project will be performed, completed, inspected, accepted and paid for in accordance with the requirements of the Project Plans, Special Provisions and Standard Specifications using MAG Standard Specifications and Details.

c. Provide personnel to administer and supervise construction. All construction Project change orders are to be copied to the State. The FHWA will participate in the construction administration cost provided by the City up to 15% of the construction cost. Construction administration costs not participated in by the FHWA shall be borne by the City.

d. Be responsible for any design consultant and contractor claims for extra compensation due to delays or whatever reason attributable to the City.

e. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent of Scope of Work requested by the City. Such changes require the prior approval of the State.

f. Consent to any inspections performed by the State, provide records or audit any books of the City in order for the State to assure itself that the monies on the Project have been spent and the Project completed in accordance with the plans and specifications, statutes, rules and regulations of the State and Federal Government.

g. Certify that all necessary rights-of-way have been or will be acquired prior to the advertisement for bid and shall be removed from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the Project area, and hereby certifies that all obstructions and encroachments have been or will be removed from there prior to the start of Project construction.

h. Allow free public access to the Project improvements during normal business hours.

i. Upon execution of this Agreement, invoice the State for an estimated amount of \$273,941.50 for Phase II, and an estimated amount of \$405,301.40 for Phase III of the Project.

j. Upon completion of construction provide for, at its own cost, and as an annual item in its budget, perpetual and proper maintenance of the Project.

k. Be required to maintain the pathway, and keep it free of debris and have safe access to all pedestrians.

l. Conduct all maintenance work in a manner to minimized traffic congestion and interference with through-traffic. All traffic control will meet the requirements of the most recent Arizona Department of Transportation's "Uniform Traffic Control Manual".

2. The State shall:

a. Agree to be the City Authorized Agent for the Project and submit a program containing the aforementioned Project to the Federal Highway Administration (FHWA) with the recommendation that it be approved for construction and funding. Should cost exceed the maximum Federal funds available, it is understood and agreed that the City will be responsible for any overage.

b. Approve the Project if such project construction funds are available by FHWA for construction of the Project. The State and FHWA hereby designate the City to self-administer the Project.

c. Enter into a Project agreement with FHWA on behalf of the City covering the work embraced in said construction contract and will request the authorized Federal funds available including design, construction engineering and administration costs.

d. Upon execution of this Agreement and within thirty-days (30) after receipt and approval of an invoice, make payments to the City for the direct actual cost of the construction of the Project, plus construction engineering.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement except as stated specifically herein. The City assumes full responsibility for design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost overruns and construction claims. The City will require its contractors to name the State and ADOT as an additional insured in the contractor's insurance policies. The City will also require its contractors to name the State and ADOT as an additional indemnitee in the City's contracts with its contractors. It is understood and agreed that the State's participation is confined to securing Federal aid; and that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the City and that the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all costs and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance or negligent performance of any provisions of this Agreement by the State, any of its departments, agencies, officers or employees, the City or any of its independent contractors. Costs

incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation or attorney's fees.

2. The cost of the construction and the construction engineering work covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of Federal aid received.

3. This Agreement shall remain in full force and effect until completion of the work; provided however, that any provisions in this Agreement for maintenance shall be perpetual, unless assumed by another governmental agency.

4. This Agreement shall become effective upon filing with the Secretary of State.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

7. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

8. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 121-1-12213) and all applicable Federal regulations under the Act including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

9. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

10. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue – Mail Drop 616E
Phoenix, AZ 85007
(602) 712-7525

City of Safford
Attn: City Manager
P.O. Box 272
Safford, AZ 85548
(928) 348-3100 3192

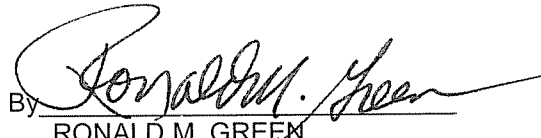
11. Pursuant to Arizona Revised Statutes § 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF SAFFORD

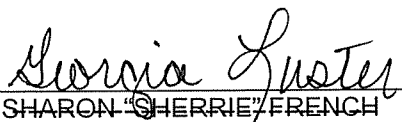
STATE OF ARIZONA

Department of Transportation

By 
RONALD M. GREEN
Mayor

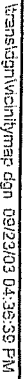
By 
for SUSAN TELLEZ
Contract Administrator

ATTEST:

By 
~~SHARON "SHERRIE" FRENCH~~
~~Clerk~~
GEORGIA LUSTER
CITY CLERK

G:05-063-Safford-Multiuse Path Phase II-III-DRAFT-26July2005-slc

FACILITY REGION	STATE	PROJECT NO.	SHEET NO.	TOTAL SHEETS	AS BUILT
9	ARIZ.				

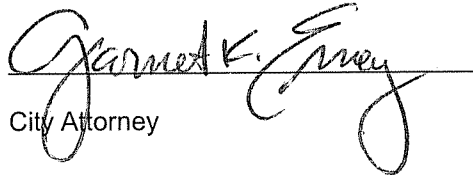


JPA 05-063

APPROVAL OF THE CITY OF SAFFORD

I have reviewed the above referenced intergovernmental Agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF SAFFORD, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 13th day of September, 2005.



City Attorney

RESOLUTION NO. 05-050

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL
OF THE CITY OF SAFFORD AUTHORIZING THE
MAYOR TO EXECUTE AN INTERGOVERNMENTAL
AGREEMENT WITH THE STATE OF ARIZONA,
DEPARTMENT OF TRANSPORTATION, FOR THE
IMPROVEMENT OF PHASE II AND PHASE III OF THE
MULTI-USE PATH AS OUTLINED IN JPA 05-063**

WHEREAS, The City of Safford desires to construct multi-use path improvements using City and Federal funds for the safety and benefit of the residents of Safford; and

WHEREAS, The Arizona Department of Transportation has agreed to seek funding from the Federal Highway Administration (FHWA) for the project in the maximum amount of \$679,243; and

WHEREAS, The City of Safford has budgeted sufficient City funds to provide at least the required matching funds for multi-use path improvements and maintain the completed path; and

WHEREAS, The Arizona Department of Transportation has agreed to act as the agent for the City of Safford to submit a program containing the project to FHWA as outlined in the contract identified as AG Contract No: KR05-0783TRN, for Project No: TEA-SAF-0-(1)/TEA-SAF-0-(2); and

WHEREAS, The City of Safford agrees to enter into AG Contract No: KR05-0783TRN to complete the improvements outlined in the agreement;

NOW THEREFORE, BE IT RESOLVED, by the Mayor and City Council of the City of Safford, Arizona, that the Mayor is authorized to enter into an intergovernmental agreement with the State of Arizona, Department of transportation, identified as AG Contract No. KR05-0783TRN.

The foregoing instrument is a full, true and correct copy
of the original on file in this office.

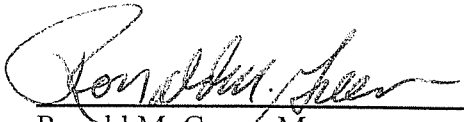
Attest: Georgia Luster
Georgia Luster, City Clerk, City of Safford, Graham
County, State of Arizona.

13-Sept-2005
Date

Resolution No. 05-050
September 12, 2005
Page 2

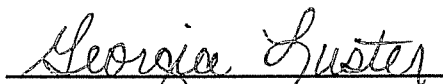
PASSED, ADOPTED, AND APPROVED by the Mayor and City Council of the City of Safford this 12th day of September 2005.

Approved



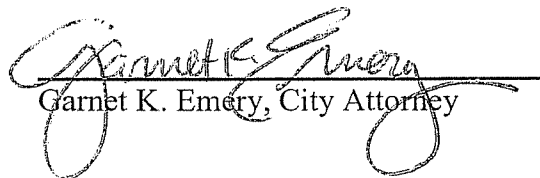
Ronald M. Green, Mayor

ATTEST:



Georgia Luster, City Clerk

APPROVED AS TO FORM:



Garnet K. Emery, City Attorney



STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL
CIVIL DIVISION
TRANSPORTATION SECTION
MEMORANDUM

Jeffrey T. Murray
Assistant Attorney General

Direct: 602-542-8859
Fax: 602-542-3646


INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR05-0783TRN (**JPA 05-063**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED September 21st, 2005.

TERRY GODDARD
Attorney General


JEFFREY T. MURRAY
Assistant Attorney General
Transportation Section

SED:dgr
Attachment
925353